

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF VERMONT

UNITED STATES OF AMERICA	:	
	:	
v.	:	File No. 1:03-CR-35-1
	:	
ANDREW CAPOCCIA	:	
	:	

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PRELIMINARY ORDER ON REMANDED FORFEITURE ISSUES

I. Background

This Court issued a Preliminary Forfeiture Order on February 2, 2006. Capoccia successfully appealed the Order, arguing this Court erred by ordering the forfeiture of assets in Capoccia's possession prior to May 24, 2000. See United States v. Capoccia, 503 F.3d 103 (2d Cir. 2007). The Second Circuit affirmed the forfeiture judgment, however, as to post-May 2000 monies, and remanded the matter to this Court for further forfeiture proceedings regarding these monies.

This Court then instructed the counsel to submit memoranda addressing the following issues: (1) the applicable accounting method(s) for tracing seized assets to the offenses of conviction; (2) whether this Court may award a money judgment in this case, and if so, the appropriate amount; and (3) whether the Court may order forfeiture of substitute assets under 21 U.S.C. § 853(p). This preliminary order addresses the parties' submissions.

## II. Preliminary Order

The Court notifies the parties and orders as follows:

1. The Court will issue a ruling deciding (i) whether the Court may award a money judgment; and (ii) whether the Court may order forfeiture of substitute assets under 21 U.S.C § 853(p).

2. The Court defers a decision on (i) the need for an evidentiary hearing; and (ii) the applicable accounting method(s) for tracing assets to the offenses of conviction.

3. Counsel shall submit to the Court by February 10, 2009, memoranda on whether, and if so to what extent, it is necessary to trace assets if the Court decides a money judgment should issue and substitute assets may be forfeited under 21 U.S.C. § 853(p).

4. Counsel shall confer and identify seized assets, including assets in Accounts 1 and 2, the forfeiture of which is not contested, and shall list all seized assets and indicate which of them are in dispute.

5. The government's Renewed Request for Immediate Partial Distribution (Paper 527) is DENIED.

SO ORDERED.

Dated at Brattleboro, in the District of Vermont, this 26th day of January, 2009.

/s/ J. Garvan Murtha  
Honorable J. Garvan Murtha  
United States District Judge